

MONTANA LEGISLATIVE HISTORY

Chapter 316 1989

Bill H 603 S _____

Original bill & history ☒ c

H. Committee on Bus & Econ Dev

Hearing Date(s) 2/17 _____ c

2/18 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Bus & Ind

Hearing Date(s) 3/10 _____ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

2/14 REFERRED TO RULES
 2/15 FISCAL NOTE REQUESTED
 2/16 HEARING
 2/20 FISCAL NOTE RECEIVED
 2/21 FISCAL NOTE PRINTED
 DIED IN COMMITTEE

HB 682 INTRODUCED BY O'KEEFE, ET AL.
 ELECT TENANT AS HOUSING AUTHORITY COMMISSIONER

2/14 INTRODUCED
 2/14 REFERRED TO HUMAN SERVICES & AGING
 2/15 HEARING
 2/16 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/20 2ND READING PASSED 92 5
 2/21 3RD READING PASSED 78 21

TRANSMITTED TO SENATE
 2/28 REFERRED TO LOCAL GOVERNMENT
 3/16 HEARING
 3/23 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 26 19
 3/29 3RD READING CONCURRED 34 15

RETURNED TO HOUSE WITH AMENDMENTS
 3/31 2ND READING AMENDMENTS CONCURRED 92 0
 4/01 3RD READING AMENDMENTS CONCURRED 90 3
 4/06 SIGNED BY SPEAKER
 4/07 SIGNED BY PRESIDENT
 4/07 TRANSMITTED TO GOVERNOR
 4/12 SIGNED BY GOVERNOR
 CHAPTER NUMBER 514 EFFECTIVE DATE: 10/01/89

HB 683 INTRODUCED BY MARKS, ET AL.
 REVISE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT
 BY REQUEST OF GOVERNOR

2/14 INTRODUCED
 2/14 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 2/16 FISCAL NOTE REQUESTED
 2/17 HEARING
 2/17 FISCAL NOTE RECEIVED
 2/18 COMMITTEE REPORT--BILL PASSED
 2/18 FISCAL NOTE PRINTED
 2/20 2ND READING PASSED 96 0
 2/21 3RD READING PASSED 98 0

TRANSMITTED TO SENATE
 2/28 REFERRED TO FINANCE & CLAIMS
 3/01 REREFERRED TO BUSINESS & INDUSTRY
 3/10 HEARING
 3/10 COMMITTEE REPORT--BILL CONCURRED
 3/11 2ND READING CONCURRED 34 7
 3/14 3RD READING CONCURRED 46 3

RETURNED TO HOUSE
 3/18 SIGNED BY SPEAKER
 3/20 SIGNED BY PRESIDENT
 3/20 TRANSMITTED TO GOVERNOR
 3/24 SIGNED BY GOVERNOR

HOUSE BILL NO. 683

INTRODUCED BY MARKS, BRADLEY, THAYER, VINCENT, RAMIREZ,
REGAN, VAN VALKENBURG, MERCER, PAVLOVICH, CRIPPEN, QUILICI,
HALLIGAN, HARRINGTON, IVERSON, D. BROWN, O'KEEFE, HARP,
SWIFT, ADDY, DRISCOLL, GIACOMETTO, BENGTON, KADAS,
SPAETH, T. NELSON, WILLIAMS, MAZUREK, HARPER, MEYER,
BARDANOUE, PECK, BOYLAN, DEVLIN, JERGSON, DAILY,
BLAYLOCK, SIMON, REHBERG, FARRELL, NATHE

BY REQUEST OF THE GOVERNOR

IN THE HOUSE

FEBRUARY 14, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 18, 1989

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 20, 1989

PRINTING REPORT.

SECOND READING, DO PASS.

FEBRUARY 21, 1989

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON FINANCE & CLAIMS.

FIRST READING.

MARCH 2, 1989

ON MOTION, REREFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

MARCH 10, 1989

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 11, 1989

SECOND READING, CONCURRED IN.

MARCH 14, 1989

THIRD READING, CONCURRED IN.
AYES, 46; NOES, 3.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 683
2 INTRODUCED BY Markus Brundage, Vincent
3 Ramsey BY REQUEST OF THE GOVERNOR W. H. Keeler
4 Carlson William James Adley
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
6 AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
7 OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
8 PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
9 FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
10 AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
11 ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
12 PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
13 ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR
14 PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
15 TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
16 SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
17 AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
18 DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
19 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING
20 SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
21 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

24 A statement of intent is required for this bill because
25 [section 3] requires the Montana board of science and

1 technology development to adopt rules to implement the
2 Montana Science and Technology Financing Act created by this
3 bill.

4 It is the intent of the legislature that the board
5 adopt rules:

- 6 (1) governing the conduct of board business;
- 7 (2) establishing application procedures that, at a
- 8 minimum, require the submittal of an executive summary for a
- 9 science and technology development project loan, a business
- 10 plan for a seed capital project loan, a research and
- 11 development project proposal for a research and development
- 12 project loan, and other documents necessary to meet the
- 13 criteria established in chapter 3 of Title 90;
- 14 (3) establishing the procedures to be followed by the
- 15 board in its review process prior to making a science and
- 16 technology development project loan; and
- 17 (4) establishing postdisbursement activities that
- 18 describe the ongoing involvement or follow-along management
- 19 of the board that may be required in a science and
- 20 technology development project loan agreement.

21 The rules should be promulgated so as to promote the
22 purposes and goals stated in the act. These include:

- 23 (1) strengthening and diversifying the state's economy
24 by facilitating a public sector-private sector partnership
25 to encourage scientific and technological development within

the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(2) using the in-state investment fund for the purposes adopted by the voters of Montana in 1982 in Initiative Measure No. 95, by providing financial programs for new and expanding businesses to encourage the creation of jobs and expansion of the tax base;

(3) assisting in the acceleration of development of technology in the state through the making of technology investments that have significant potential for commercialization in Montana;

(4) working to forge a partnership among the private sector, the university community, and government;

(5) creating a funding source for the board to use in making seed capital development project loans;

(6) creating a mechanism for the board to use in making seed capital project loans; and

(7) creating a mechanism for the board to use in making research and development project loans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. This chapter may be cited as the "Montana Science and Technology Financing Act".

NEW SECTION. Section 2. Findings and purpose. (1) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the in-state investment fund created through adoption of Initiative Measure No. 95 by the voters of Montana in 1982 is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be

1 unconstitutional by the Montana supreme court, and the 51st
2 legislature of the state of Montana must remedy those
3 defects through legislation; and

4 (f) the Montana science and technology development
5 board has demonstrated success in forging a partnership
6 among the private sector, the university community, and
7 government, and this success should be continued through an
8 ongoing legislative commitment to the board's programs.

9 (2) The purposes of this chapter are to provide:

10 (a) a funding source for the board to make seed
11 capital project loans;

12 (b) a mechanism for the board to use in making seed
13 capital project loans; and

14 (c) a mechanism for the board to use in making
15 research and development project loans, the funding source
16 of which will be provided by separate legislation.

17 NEW SECTION. Section 3. Rulemaking authority. The
18 board shall adopt rules necessary to implement the
19 provisions of this chapter, including but not limited to
20 rules:

21 (1) governing the conduct of board business;

22 (2) establishing application procedures that, at a
23 minimum, require the submittal of:

24 (a) an executive summary for a science and technology
25 development project loan;

1 (b) a business plan for a seed capital project loan;

2 (c) a research and development project proposal for a
3 research and development project loan; and

4 (d) other documents necessary to meet the criteria
5 established in this chapter;

6 (3) establishing the procedures to be followed by the
7 board in its review process prior to making a science and
8 technology development project loan; and

9 (4) establishing postdisbursement activities that
10 describe the ongoing involvement or follow-along management
11 of the board that may be required in a science and
12 technology development project loan agreement.

13 NEW SECTION. Section 4. Science and technology
14 development project -- priorities. (1) The board shall make
15 a loan for a science and technology development project if
16 it determines that the project has potential to stimulate
17 economic development in this state and meets the loan
18 criteria established in this chapter.

19 (2) The board shall give priority to project proposals
20 that it determines incorporate innovative technologies and
21 involve, but are not limited to, one or more of the
22 following target technologies:

23 (a) mineral technology;

24 (b) agricultural technology;

25 (c) forestry technology;

- 1 (d) energy technology;
- 2 (e) materials sciences;
- 3 (f) information sciences;
- 4 (g) biotechnology;
- 5 (h) microelectronics and computer sciences; or
- 6 (i) hazardous waste treatment and disposal.

7 NEW SECTION. **Section 5.** General criteria underlying
8 science and technology development project loan program. The
9 board may make a science and technology development project
10 loan only upon a favorable determination that the proposed
11 project:

12 (1) is consistent with the findings and purposes of
13 this chapter because it incorporates innovative technology;

14 (2) has prospects for collaboration between the public
15 and private sectors of the state's economy;

16 (3) has prospects for achieving commercial success and
17 for creating new jobs in the state;

18 (4) has potential for commercial success related to
19 the specific product or business development methodology
20 proposed;

21 (5) can provide matching funds to the project as
22 required under 90-3-301; and

23 (6) has a management structure that allows ongoing
24 postdisbursement involvement by the board.

25 NEW SECTION. **Section 6.** Seed capital project --

1 goals. (1) The board may make a seed capital project loan in
2 a company upon a determination by the board that the project
3 meets the loan criteria established in [sections 5 and 7]
4 and that the project meets the goals established in
5 subsection (2) and involves the development and
6 commercialization of innovative products or processes.

7 (2) The goals in making a seed capital project loan
8 are:

9 (a) to assist the development of innovative technology
10 in the state by providing a source of capital to the
11 technology-based entrepreneurial sector in the state's
12 economy;

13 (b) to provide financing and follow-along management
14 support for entrepreneurial companies in the state that are
15 attempting to develop products or processes based on
16 innovative technologies; and

17 (c) to provide a liaison between entrepreneurial
18 companies in the state and other investors in an effort to
19 enhance the pool of capital available to technology-based
20 companies in the state.

21 NEW SECTION. **Section 7.** Specific criteria for seed
22 capital project loans. The board may make a seed capital
23 project loan only if it determines that the proposed project
24 complies with the criteria and goals set forth in [sections
25 5 and 6] and the board further determines that:

(1) the project develops or employs innovative technology to produce a product or process that promises a significant competitive advantage;

(2) the project provides an opportunity to preserve the principal of the loan amount and earn a monetary return;

(3) the project has potential to realize substantial growth in sales and a sales revenue level that provides the capacity to meet the board's payback requirements;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's basic industries;

(6) the company's management team possesses sufficient business experience to enable the company to reach its commercial potential;

(7) the company has a strong potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's product or process is targeted for a sizeable commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) the company's business plan is sufficiently designed to complete financing, marketing, and production objectives to accomplish the proposed commercialization.

NEW SECTION. **Section 8. Research and development**

project -- goals. (1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in [sections 5 and 9] and that the project meets one of the goals established in subsection (2).

(2) The goals of the research and development project loan program are:

(a) to significantly upgrade existing research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to:

(i) advance technology development in the state; or

(ii) be readily commercialized upon completion of the research phase; or

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace.

(3) These goals may be accomplished by:

(a) supporting the advanced technology centers of excellence program that will institutionalize cooperative arrangements between the public sector and the private sector and significantly build on existing research and development capabilities;

(b) providing financial support for individual

research and development projects that are at a preprototype or early stage but that hold significant potential for future commercial success;

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel;

(d) facilitating the flow of information to technology-based entrepreneurial businesses in the state to assist those businesses in reaching their full commercial potential; or

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes.

NEW SECTION. **Section 9.** Specific criteria for research and development project loans. The board may make a research and development project loan upon its determination that the proposed project complies with the criteria and goals set forth in [sections 5 and 8] and if the board determines that:

(1) the project has the potential to diversify or add value to a basic industry of the state's economy;

(2) the project demonstrates a clear path to commercial development of the research results within the state;

(3) the project involves university system research participation whenever practical;

(4) the project employs or otherwise takes advantage of existing research and development strengths within the state's university and private research establishments;

(5) the project involves a realistic and achievable research project design;

(6) the project develops or employs an innovative technology;

(7) the project activity is located within the state; and

(8) the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objectives of the project.

NEW SECTION. **Section 10.** Science and technology development project loans -- board action. (1) If the board determines that a science and technology development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the board, the board may enter into a science and technology development project loan agreement with the loan recipient and authorize the disbursement of funds to the loan recipient.

(2) All decisions of the board are final and not subject to the contested case provisions of Title 2, chapter

1 4.

2 NEW SECTION. Section 11. Science and technology
3 development project loan agreement. (1) The board shall
4 enter into a science and technology development project loan
5 agreement with a loan recipient whose product or process
6 will be developed and commercialized as a result of a
7 science and technology development project loan.

8 (2) The loan agreement, at a minimum, must contain the
9 following provisions:

10 (a) the project budget;

11 (b) the financing, marketing, and production
12 milestones for the project that describe project tasks to be
13 achieved in each phase of the project at designated times;

14 (c) the reporting requirements, including but not
15 limited to:

16 (i) quarterly financial statements;

17 (ii) quarterly commercialization progress reports;

18 (iii) annual reports; and

19 (iv) reports on any significant project transactions;

20 (d) the disbursement schedule for the loan;

21 (e) the payback to the board;

22 (f) the causes for loan revocation, suspension, or
23 termination; and

24 (g) the intellectual property provisions.

25 NEW SECTION. Section 12. Seed capital project loan

1 agreement -- specific requirements -- payback. (1) In
2 addition to the loan agreement provisions required in
3 [section 11], a seed capital project loan must be structured
4 as contracted debt that includes but is not limited to the
5 following terms:

6 (a) an interest rate set at the level that provides a
7 return to the board, from paybacks by all of its portfolio
8 companies, in an amount at least equal to the principal
9 amount of the loans and that provides for a market rate of
10 return when considering the overall benefit to the state
11 derived from the projects;

12 (b) a provision in the note that may defer debt
13 service until maturity of the note, the term of which may
14 not exceed 8 years;

15 (c) a loan amount that may not exceed \$350,000 in any
16 one round of financing. Successive rounds of financing in
17 which the board participates for any one company may not
18 occur within a 9-month period. The total amount that may be
19 loaned to any one company may not exceed \$750,000.

20 (d) a provision that the note becomes due in full upon
21 dissolution or liquidation of the company.

22 (2) (a) In addition to the provisions in [section 11]
23 and subsection (1), a seed capital project loan agreement
24 may provide for any of the following:

25 (i) a convertible debenture;

1 (ii) a warrant held by the board; or
 2 (iii) a warrant held by a third party for the benefit
 3 of the board.

4 (b) However, the board itself may not convert the
 5 convertible debenture, exercise the warrant, or hold stock
 6 acquired upon any conversion or exercise.

7 **NEW SECTION. Section 13. Research and development**
 8 **project loan agreement -- specific requirements -- payback.**
 9 In addition to the loan agreement provisions described in
 10 [section 11], a research and development project loan
 11 agreement must be structured as contracted debt with the
 12 following terms:

13 (1) The agreement must include provisions calling for
 14 a payback of two times the original loan amount paid as a
 15 percentage of the income stream derived from the sale or
 16 other commercialization of products or processes developed
 17 with the board's financing. This percentage rate may not
 18 exceed 5%.

19 (2) The payback on a research and development project
 20 loan for a technology transfer and assistance project may be
 21 made pursuant to subsection (1) or may be realized in terms
 22 of indirect benefits related to the goals and criteria of
 23 the program. No more than 10% of the board's annual
 24 allocation of research and development funds may be used for
 25 technology transfer and assistance projects.

1 **NEW SECTION. Section 14. Deposit of payback -- seed**
 2 **capital and research and development project loans.** (1) The
 3 payback of principal and earnings on a seed capital project
 4 loan executed under this chapter must be administered
 5 pursuant to section 17-6-306.

6 (2) The payback of principal and earnings on a
 7 research and development project loan must be deposited to
 8 the state special revenue fund to the credit of the science
 9 and technology development account created in [section 15].

10 (3) All paybacks of principal and earnings to the
 11 board from any agreements executed by the board between July
 12 1, 1985, and March 31, 1989, must be deposited to the state
 13 special revenue fund to the credit of the science and
 14 technology development account created in [section 15] for
 15 use by the board. The paybacks include all those received
 16 after January 1, 1989.

17 **NEW SECTION. Section 15. Science and technology**
 18 **development account.** (1) There is a science and technology
 19 development account within the state special revenue fund
 20 established in 17-2-102.

21 (2) There must be paid into the science and technology
 22 development account:

23 (a) the payback of principal and earnings on a
 24 research and development project loan executed under this
 25 chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

NEW SECTION. Section 16. Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers. (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least two members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

Section 17. Section 90-3-102, MCA, is amended to read:

***90-3-102. Definitions.** As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) "Board" means the Montana board of science and technology development board provided for in 2-15-1810 [section 16].

(2)--"Business-and-industry"--means--a--privately--owned and--operated--agricultural--or--commercial--enterprise--or association--that--maintains--a--research,--development, commercial,--or--manufacturing--facility--in--Montana,--The enterprise-or-association-need-not-have-its-headquarters within-the-state:

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(3)(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and

technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

(4)(11) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(12) "Research and development project" means a science

and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

(13) "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

(5)(14) "Technology Science and technology development project" means an-activity either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

(6)---"Technology-investment"---means---an---award---of---funds for---a---technology-development-project,---including---technology transfer,---to---stimulate---Montana's---economy,---The---technology investments---authorized---by---this-act---are---not---investments-of public-funds-for-purposes-of-Article-VIII,---section---13,---of the---Montana---constitution,---or---Title-17,---chapter-6,---relating to---the---unified---investment---of---public---funds,---but---are investments---of---public---resources---intended---to---encourage technologically---based---economic---development---that---may eventually---result---in---a---financial---return---on---those investments.

(15) "Science and technology development project loan

1 agreement" or "loan" means an agreement entered into between
 2 the board and the loan recipient of a seed capital project
 3 loan or a research and development project loan that:

- 4 (a) creates a debt relationship between the parties;
 5 (b) provides for a financial return to the board;
 6 (c) provides economic development potential to the
 7 state; and
 8 (d) contains the applicable provisions and terms
 9 required by this chapter.

10 (16) "Seed capital project" means a startup capital
 11 project or expansion capital project.

12 (17) "Seed capital project loan" means a science and
 13 technology development project loan entered into between the
 14 board and a loan recipient for a seed capital project.

15 (18) "Startup capital project" means a science and
 16 technology development project that assists a company in
 17 initiating commercial operations.

18 (19) "State" means the state of Montana.

19 (20) "Warrant" means an instrument issued by a
 20 corporation that gives a holder other than the board the
 21 right to purchase stock of a corporation either for a
 22 limited time or perpetually."

23 **Section 18.** Section 90-3-203, MCA, is amended to read:

24 **"90-3-203. Powers and duties of board.** The board
 25 shall:

1 ~~{1}--establish-policies-and-priorities-that-will-expand~~
 2 ~~and--develop--the-use-of-science-and-technology-for-economic~~
 3 ~~development-in-Montana;~~

4 ~~{2}--provide-technical-assistance-for-the--transfer--of~~
 5 ~~technology--to--Montana-businesses-in-order-to-encourage-the~~
 6 ~~use-of-new-technology-by-Montana-business-and-industry;~~

7 ~~{3}{1}~~ make technology-investments loans in science
 8 and technology development projects pursuant to the
 9 provisions of this act in the following areas that have
 10 short---or---long-term potential to stimulate economic
 11 development in Montana:

- 12 (a) research capability development;
 13 (b) applied ~~technological~~ technology research;
 14 (c) technology ~~assistance-and~~ transfer and assistance;
 15 and

16 (d) ~~seed-capital-awards~~ startup capital or expansion
 17 capital projects for development and commercialization of
 18 new innovative products and processes;

19 ~~{4}{2}~~ accept grants or receive devises of money or
 20 property to be used in Montana for investments-described-in
 21 loans made pursuant to this chapter; and

22 ~~{5}{3}~~ submit to the governor and the legislature a
 23 report describing the board's programs and accomplishments
 24 by November January 1 of each even-numbered odd-numbered
 25 year or at the request of the governor;

~~{6}--adopt--rules--necessary--to--implement--the--provisions
of--this--chapter--including--but--not--limited--to--rules--~~

~~{a}--governing--the--conduct--of--board--business--~~

~~{b}--establishing--matching---fund---requirements---for
capability--basic--research--and--seed--capital--investment
programs--~~

~~{c}--establishing---criteria---for---determining---the
eligibility---of---projects---and--programs--for--technology
investments--~~

~~{d}--establishing--methods--of--committing--funds--types
and--amounts--of--fees--and--types--of--research--investments--to--be
made--and~~

~~{7}--adopt--specific--goals--and--objectives--for--each
program--administered--by--the--board--"~~

Section 19. Section 90-3-301, MCA, is amended to read:

"90-3-301. Appropriation authority and funding --
matching funds. (1) The board has authority to accept and
expend all funds received by it as grants, donations, or
other private or public income. These funds are statutorily
appropriated as provided in 17-7-502. ~~No award may be made
for--activities--for--which--matching--funds--or--participation--of
financial--intermediaries--is--required--until--such--funds--have
been--committed--~~

~~{2}--Dollar--for--dollar---matching--funds--are--required
prior--to--any--expenditure--of--state--funds--for--research~~

~~capability--development--applied--technological--research--or
seed--capital--awards--or--investments--provided--for--in--90-3-203--~~

~~{3}{2}~~ The appropriations and investments loans made
to and by the board are in addition to and separate from
general fund appropriations to the university system and
other state agencies.

(3) A loan may not be made for a project for which
matching funds have not been received. Matching funds are
required prior to any expenditure of board funds for
research and development projects or seed capital projects.
The board may accept as matching funds those received by the
loan recipient within 1 year prior to the execution of the
loan agreement. The board may require additional matching
funds, depending on the capital need and the degree of risk
encountered in the science and technology development
project."

Section 20. Section 90-3-304, MCA, is amended to read:

"90-3-304. Accountability -- audits. ~~{1}--The--board
shall--develop--independent--review--and--audit--procedures--to
ensure--that--investments--made--by--it--are--used--for--the--purposes
identified--in--its--investment--agreements--~~

~~{2}--The--board's--technology--investment--agreements--must
contain--provisions--considered--necessary--by--the--board--to
ensure--the--proper--inspection--and--review--of--projects--the
attainment--of--project--goals--and--the--maintenance--of--adequate~~

financial-records-by-recipients-of-board-funds-

{3} The board's books and records must be audited by or at the direction of the legislative auditor. The legislative auditor ~~must~~ shall conduct a performance audit of the board's goals, objectives, and statutory duties prior to the ~~51st~~ 52nd legislative session and at such times as determined necessary by the legislative audit committee. The actual costs of audits must be paid from the board's funds."

Section 21. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel

and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) assistant director for security of the Montana state lottery; and

(14) executive director and senior investment officer of the Montana board of science and technology development."

Section 22. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) The Except as provided in subsection (4), the Montana in-state investment fund must be invested as authorized by rules adopted by the board. For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.

(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in

consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed \$3,000,000 with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(4) The board shall allow the Montana board of science and technology development provided for in [section 16] to

administer \$7.5 million of the in-state investment fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 23. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;

1 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
 2 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
 3 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
 4 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
 5 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
 6 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
 7 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
 8 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 9 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 10 section 13, House Bill No. 861, Laws of 1985; and section 1,
 11 Chapter 454, Laws of 1987.

12 (4) There is a statutory appropriation to pay the
 13 principal, interest, premiums, and costs of issuing, paying,
 14 and securing all bonds, notes, or other obligations, as due,
 15 that have been authorized and issued pursuant to the laws of
 16 Montana. Agencies that have entered into agreements
 17 authorized by the laws of Montana to pay the state
 18 treasurer, for deposit in accordance with 17-2-101 through
 19 17-2-107, as determined by the state treasurer, an amount
 20 sufficient to pay the principal and interest as due on the
 21 bonds or notes have statutory appropriation authority for
 22 such payments. (In subsection (3): pursuant to sec. 15, Ch.
 23 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 24 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 25 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.

1 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 2 1987, terminates July 1, 1988.)"

3 NEW SECTION. **Section 24. Repealer.** Sections
 4 2-15-1810, 90-3-103, 90-3-302, and 90-3-401 through
 5 90-3-420, MCA, are repealed.

6 NEW SECTION. **Section 25. Codification instruction.**
 7 (1) [Sections 1 through 15] are intended to be codified as
 8 an integral part of Title 90, chapter 3, and the provisions
 9 of Title 90, chapter 3, apply to the provisions of [sections
 10 1 through 15].

11 (2) [Section 16] is intended to be codified as an
 12 integral part of Title 2, chapter 15, part 18, and the
 13 provisions of Title 2, chapter 15, part 18, apply to
 14 [section 16].

15 NEW SECTION. **Section 26. Severability.** If a part of
 16 [this act] is invalid, all valid parts that are severable
 17 from the invalid part remain in effect. If a part of [this
 18 act] is invalid in one or more of its applications, the part
 19 remains in effect in all valid applications that are
 20 severable from the invalid applications.

21 NEW SECTION. **Section 27. Effective date.** [This act]
 22 is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB683, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to establish a science and technology development project loan program consisting of specific goals and criteria for seed capital projects; to authorize the Montana Board of Science and Technology Development to administer \$7,500,000 of the in-state investment fund for seed capital loans; and to generate a financial return-on-investment and stimulate economic development and job creation in Montana.

ASSUMPTIONS:

1. Dollar-for-dollar matching funds are required for all seed capital financings by the Montana Science and Technology Alliance (MSTA).
2. The MSTa will be authorized to manage a portion of the in-state investment fund for economic development proposed under its Seed Capital Financing Program, but with monetary return-on-investment as a priority (as the MSTa currently conducts business). Under this management requirement, the most that the MSTa can appropriately utilize is \$1.5 million per year for the five years beginning on July 1, 1989 (for a total of \$7.5 million).
3. Administrative costs of the seed capital financing program will be paid from the general fund and appropriated through the general appropriations act beginning on July 1, 1989. (Including Legislative Auditor charges for the audit requirements in Section 20.)
4. The MSTa will manage its portion of the in-state investment fund to receive a market rate of return.
5. Earnings on the in-state investment fund are divided with 100% of the principal returned to the in-state investment fund, 15% of the interest earnings appropriated to the coal severance tax permanent fund and 85% of the interest earnings appropriated to the general fund. (This distribution formula is contained in Section 17-6-306, MCA).

FISCAL IMPACT:Revenues: NoneExpenditures: NoneLONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The MSTa's 1:1 statutory matching funds requirement would generate an additional \$7.5 million of private capital for a total amount of funds to be expended by Montana companies as follows:

MSTA Funds for 5-years	\$ 7,500,000
Matching Funds for the 5-years	<u>7,500,000</u>
TOTAL Funds for the 5-years	\$15,000,000
(1989 through 1994)	


RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/17/89


ROBERT L. MARKS, PRIMARY SPONSOR

DATE 2-17-89Fiscal Note for HB683, as introduced**HB 683**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 17, 1989, at
7:30 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 600

Motion: Rep. Bachini moved DO PASS.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 600 DO PASS.

DISPOSITION OF HOUSE BILL 626

Motion: Rep. Blotkamp moved DO PASS. Rep. Johnson moved an
amendment to the bill.

Discussion: Rep. Blotkamp stated that he would like to change
his vote to a DO PASS. Originally I did not want to send
out a message to MRL that we were antibusiness. Through
further testimony that I have heard and clarification, I
don't see any problem with the bill. If we can bring the
bill back so I can change my vote I would appreciate it.

Amendments, Discussion, and Votes: Rep. Johnson wants to make an
amendment to make the bill effective upon passage and
approval. The amendment DO PASS 10-5 vote.

Recommendation and Vote: HB 626 DO PASS as amended 9-7 vote.

Mr. Novak said he has been in the mobile home business for 30 years. He owns 2 mobile home parks. All the problems are arising from repossessions. We had one a short while back, the payoff was around \$21,000, and the home is worth \$14,000. It is going to be simple for us to notify the owner Golden Meadow, to say come pay or loan off for \$21,000 and collect your lot rent. We only have Greentree today and they finance 90 percent of the homes in Montana. If the bill goes through you have killed all the dealers in Montana. If I don't have Greentree I can't get a home financed by a bank in Billings without me personally endorsing the sale. I personally have lost several hundred thousand dollars in the past five years on repossessions.

Mr. Pierce stated he is opposed to the bill. We have problems with our collections and financial institutions have problems with their collections. Asking us to be the party to have to take care of somebody else's collections is asking too much.

Questions From Committee Members: Rep. Simon asked Mr. Varone what his position is with the amendments? Mr. Varone said with those amendments, they protect our priority liens and that is our main concern with this bill.

Closing by Sponsor: Rep. Grady said it appears that all the risk has to be put on these people. The people in the mobile home business seem to think these people have to take all the risk. The court owners want some way to collect the back lot rent before the trailer is moved out.

HEARING ON HOUSE BILL 683

Presentation and Opening Statement by Sponsor:

Rep. Marks stated that this bill is the Science and Technology Financing Act. Rep. Marks went through the purpose of the bill.

Testifying Proponents and Who They Represent:

Steve Huntington, Science & Technology Board
D.A. Baker, MD, Spokane, WA
David Pepper, President, Health Incentives, Inc.
Larry Gianchetta, Dean, School of Business, U of M, Missoula
Bruce McLeod, Professor, Electrical Engineering, MSU,
Bozeman
Carol Daly, Exec. Director, Flathead Economic Development Corp.

Proponent Testimony:

See exhibit 1 for Mr. Huntington's testimony.

See exhibit 2 for Dr. Baker's testimony.

See exhibit 3 for Mr. Pepper's testimony.

See exhibit 4 for Mr. Gianchetta's testimony.

See exhibit 5 for Mr. McLeod's testimony.

See exhibit 6 for Ms. Daly's testimony.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Marks closed.

DISPOSITION OF HOUSE BILL 683

Motion: Rep. Bachini moved DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 683 DO PASS unanimously.

HEARING ON HOUSE BILL 690

Presentation and Opening Statement by Sponsor:

Rep. Spaeth said his bill provides for deduction from the taxable value of a title insurer or a title agent the value of its title plant; and amends Sections 15-6-201 and 15-24-602, MCA.

Testifying Proponents and Who They Represent:

Gene Phillips, Montana Land Title Association

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 17 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE

2/17/89

BILL NO.

683

NUMBER

NAME

AYE

NAY

Bob Pavlovich

Bob Bachini

Rob Blotkamp

Gene DeMars

Bill Glaser

Stella Hansen

John Johnson

Vernon Keller

Tom Kilpatrick

Lloyd McCormick

Thomas Nelson

Bruce Simon

Clyde Smith

Don Steppler

Fred Thomas

Norm Wallin

TALLY

16

Sue Pennington

Secretary

Bob Pavlovich

Chairman

MOTION:

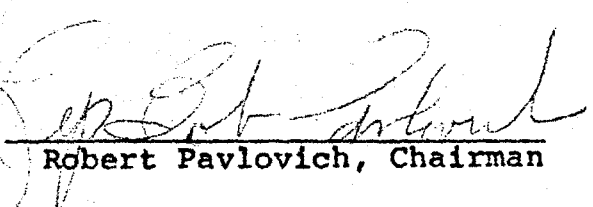
Bachini do pass

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 683 (first reading copy -- white) do pass.

Signed: 

Robert Pavlovich, Chairman

1
2/17/89
HB 683

THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT
INTRODUCED BY REQUEST OF THE GOVERNOR

CAPITAL AVAILABILITY IN MONTANA:

- Economic development depends on a number of factors, one of which is the availability of capital for new and expanding businesses.
- There is a need in Montana for investment capital for businesses which have economic potential, but which do not meet the traditional lending requirements of commercial banks.
- The Science and Technology Alliance is meeting that need through its process of identifying, developing, and financing businesses which utilize innovative technologies.

THE ACT HAS THREE MAJOR PURPOSES:

- It provides \$1.5 Million per year (\$7.5 million over a five year period) for the Seed Capital Financing Program.
- It establishes procedures for operation of the Seed Capital Financing Program.
- It establishes procedures for operation of the Research and Development Financing Program. (not funded by this act)

SEED CAPITAL PROGRAM FUND SOURCE:

- The fund source for the Seed Capital Program is the instate investment fund.
- A portion of the Coal Severance Tax Trust Fund which was established by the voters in 1982 for financing business development in Montana. (The fund has a \$24 million balance)

RETURN ON INVESTMENT:

- In addition to creating new jobs and expanding the state's tax base, the Seed Capital Program is structured to provide a monetary return of \$8.5 million to the coal trust and at least \$6.2 to the general fund.

CONSTITUTIONALITY OF THE ACT:

- The act specifically addresses the constitutional problems identified by the Montana Supreme Court in the White Decision:
 - * This act does not use bond proceeds.
 - * This act is very specific regarding the criteria by which financing decisions are made.

ADMINISTRATIVE PROVISIONS:

- The act establishes a nine member board appointed by the Governor.
- The act requires explicit return-on-investment agreements which protect the State's position and provide for monetary return.
- The act requires that all financings with State funds are matched by at least an equal amount of private financing.
- The act provides for two staff members to be exempt from pay plan regulations. All staff are to be hired by the Governor through the Department of Commerce.

LEGISLATIVE ACTION:

- The act provides for management of a portion of the instate investment fund - it does not appropriate funds.
- The act requires a simple majority for passage.

HB
2/17



D. A. Baker, M.D.
Baker Guardian
Holy Family Medical Clinic
E. 235 Rowan - Suite 109
Spokane, WA 99207
(509) 483-0158

February 9, 1989

Representative Bob Pavlovich
Chairman of the House Business & Economics Development Committee
Capitol Station
Helena, Montana 59620

I would like to encourage your support of the Montana Science & Technology Alliance Program. From 1984 - 1988 M.S. & T.A. evaluated my high tech developmental project and felt it and its' associated industry would be good for Montana's business and commerce. My development centers on miniaturizing and automating the fetal monitoring equipment currently being used by hospitals throughout the world. Converting this diagnostic equipment into a portable form has had the firm support of leading health agencies interested in cutting their medical diagnostic overhead expenses. It's technical development has had financial and promotional support from NASA and the National Institute of Health. Unfortunately the M.S. & T.A.'s support of the project was curtailed in a recent decision of the Montana Supreme Court.

If Montana hopes to maintain its' economic stability, investments for the future have to be made and institutions such as M.S. & T.A. must have your support. A number of other states have encouraged high tech development quite profitably in creating jobs and establishing the seeds for maintaining a technically trained work force which is so necessary for the economic health of its' state.

The State of Montana needs its Science and Technology Alliance office if jobs and industry are to be encouraged in Montana.

Sincerely,

D.A. Baker, M.D.

#3
2/17/89
HBB

February 15, 1989

Bob Pavlovich
Chairman
Montana House of Representatives
Business and Economic Development Committee
Helena, MT

Dear Mr. Pavlovich:

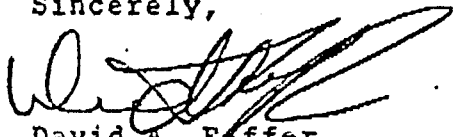
I am David Feffer, President of Health Incentives, Inc. and am writing in support of the proposed Montana Science and Technology Financing Act.

Expanding the business base in Montana is of critical importance to the positive economic and social future of the state. One of the keys to expanding this base, through the creativity and hard work of people willing to take an idea and grow it into a functioning business, is the availability of capital. Montana, is sadly lacking in capital for business development and expansion; and I feel that the proposed Montana Science and Technology Financing Act is a extremely important step in filling this capital void.

From a personal point of view, Michael Wood and I founded Health Incentives in 1983 with limited capital that we raised from family and friends. There was no other source available. With this we built a small successful business. Our business showed significant potential and after four years we required additional capital to expand. We sought financing from the Montana Science and Technology Alliance and we were successful in receiving \$100,000 to match monies that were invested by private individuals. This financing along with the technical assistance that we received from the Alliance staff and board were invaluable in helping Health Incentives achieve business success. Without the Alliance financing our expansion would have been seriously affected if not stopped altogether.

As an entrepreneur, I have been continually frustrated with the unavailability of capital for business development in Montana. There are hundreds of people in the state with good business ideas and the energy to make them a reality. This act will provide what I believe is an important source and catalyst for broad based and needed economic expansion in Montana.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David A. Pfeffer', written over a horizontal line.

David A. Pfeffer
President and CEO

DAF/lg

Intra-campus MEMORANDUM

2/17/89
HB 68

UNIVERSITY OF MONTANA
School of Business Administration

DATE: February 16, 1989
TO: House Business and Economic Development Committee
FROM: Larry Gianchetta, ^{JD}Dean
RE: Montana Science and Technology Financing Act

For the record, my name is Larry Gianchetta and I am Dean of the School of Business Administration at the University of Montana. Also, it should be noted that I was a member of the Financial Advisory Committee to the Montana Science and Technology Alliance when it was still in the seed capital business. This is a committee which looks at businesses in the early stages of development for possible seed capital funding.

Being a Professor of Management and Dean of the School of Business Administration, I am often engaged in working with businesses in the early stages of their development. There is plenty of statistical data to support that many well-managed businesses with an excellent product ultimately end in failure due to the lack of working capital. Most financial institutions are willing to make loans to businesses with their assets as collateral. Businesses in the early stages of their development have not had the opportunity to develop the necessary assets to qualify for loans at most loaning institutions. It is critical that the State of Montana provide a vehicle for capital infusion into these businesses in their early stages and I think the seed capital program provided by the Montana Science and Technology Alliance was working well. In fact I must say, having been involved in many similar processes, that there are none as streamlined and sophisticated as the seed capital program that existed within MSTTA. When one considers the staff, the board of directors, and the members of the financial advisory committee, the people resource base there is outstanding. Coupled with the process that was in place, the seed capital made available to early stage companies was "well-invested." Two particular examples in the Missoula area I have worked with from almost day one are Health Incentives and ChromatoChem.

Statistics provided by our Bureau of Business and Economic Research regarding the out-migration in our state over the last decade indicate we should all be concerned. The Montana Science and Technology Financing Act is exactly "what the doctor ordered" to reverse that trend. I encourage you to support the

aforementioned act and let the Montana Science and Technology Alliance go back to providing seed capital to early stage businesses. It has an excellent, and proven, track record.

LG:CD

2/17/88
HB 656

TESTIMONY IN SUPPORT

OF

HOUSE BILL 653

Mr. Chairman, and Members of the Committee

My name is Bruce McLeod. I am a Professor of Electrical Engineering at Montana State University and also President and CEO of Life Resonances Inc., a Montana corporation started, in part, with the help of a seed capital loan from the Montana Science and Technology Alliance (MSTA). I would like to submit this testimony in support of HB 656 which is being considered in this hearing.

Several years ago, my research at MSU developed to the point where it was suggested that I should consider its commercial potential. I wrote a proposal and submitted it to MSTTA. The MSTTA board reviewed the proposal, both internally and with the help of consultants from several other laboratories throughout the U.S., and eventually offered to commit a \$125,000 seed capital loan to our company. The offer was contingent upon our being able to attract two and one-half times this amount from outside sources. We were able to attract the outside capital, and our company was started in 1987. I would like to outline for you how MSTTA's initial loan has produced working dollars for Montana.

During the first year, Montana State University received \$182,000 as a research contract plus there was an additional \$30,000 spent with a local Bozeman electronics firm for prototypes of our first device. During year two, this year, an additional \$72,000 in research contracts have been placed with MSU, an additional \$30,000 to \$40,000 will be spent in manufacturing with the electronics firm, and about \$10,000 will be spent in Bozeman for cloth goods that will become part of our product. To date then, the initial \$125,000 loan from MSTTA has resulted in a total of \$324,000 being spent in Bozeman, Montana!

My company has commitments for at least three more years of research support at an anticipated level of about \$100,000 per year. During that same three years, the number of devices built in Bozeman will increase rapidly, resulting in an additional \$50,000 to \$100,000 per year being spent for manufacturing. There is a potential, then, for an additional \$450,000 being spent in Bozeman, for a five year total of almost \$800,000. Again, I point out that it is the initial \$125,000 loan from MSTTA that is the base for this entire scenario. It should also be pointed out that the loan will be paid back to MSTTA, with approximately \$187,000 in interest added to the original amount. Thus, it would appear that a leverage of nearly eight to one will be generated by this seed capital loan. That, of course, is exactly what MSTTA is all about.

In a committee meeting held in these halls last week, an opponent stated that MSTTA was "playing with the State's money". It was further implied that what MSTTA has set forth as a set of goals cannot be done in Montana

2/17/89
HB683

TESTIMONY OF
Carol Daly, Executive Director
Flathead Economic Development Corporation

PREPARED FOR THE
House Business & Economic Development Committee
February 17, 1989

on
HB683
"The Montana Science and Technology Financing Act"

Mr. Chairman, members of the Committee, for the record my name is Carol Daly. I am executive director of the Flathead Economic Development Corporation, a private non-profit organization working to stimulate and support new and expanded business opportunities in the Flathead Valley.

I also am wearing two other hats today -- as one of the original board members of the Montana Science and Technology Alliance, and as the co-owner (with my husband) of a precision machine shop in Kalispell specializing in defense and aerospace component manufacturing.

As an economic developer, I try to help businesses and entrepreneurs with high technology products they are seeking to commercialize. Most of these people have exhausted their personal resources in bringing their ideas to the commercialization stage. They have little left to offer for collateral. They are facing heavy start-up expenses with, in the early months, low cash flows. Their ability to access conventional financing sources is almost nil. What they need is equity or near-equity (patient) financing. They cannot start paying back the debt the day after they incur it, BUT they have the potential to generate many, many times the payback amount in the future.

When the Montana Science and Technology Alliance was making seed capital investments, these businesses and entrepreneurs had an opportunity to develop in Montana, if their products and processes were sound. The rigorous due diligence review of MSTTA was designed to filter out unsound deals, and to help good deals develop into better ones. Not only the money, but the technical assistance provided were badly needed, and gratefully received.

Without the MSTTA seed capital program, however, I have no place to send the technologically and commercially exciting deals I find. I have tried to find private individuals willing to invest their funds in such projects, but unless they have some due diligence capability themselves, such investors are very reluctant to expose themselves to the higher risk of new technology projects. In five months of trying, I have placed only one high tech project with private investors.

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

1 *House* BILL NO. *683*
2 INTRODUCED BY *Mark Brady, Mike Vincent*
3 *Ross* BY REQUEST OF THE GOVERNOR *Van Dusen*
4 *Carlson* *W. Carlson* *Steve Brown* *ADDY*
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
6 AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
7 OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
8 PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
9 FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
10 AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
11 ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
12 PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
13 ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR
14 PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
15 TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
16 SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
17 AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
18 DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
19 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING
20 SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
21 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

22 STATEMENT OF INTENT

23
24 A statement of intent is required for this bill because
25 [section 3] requires the Montana board of science and

There is no change on HB 683 and will not be
reprinted. Please refer to introduced (white)
or second reading (yellow) for complete text.

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 10, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Weeding, Senator
Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 683

Presentation and Opening Statement by Sponsor:

Representative Marks, House District 75 said, HB 683 contained the revisions needed in the science and technology act. He stated the act provided the alliance with \$1,500,000 per year, a total of \$750,000,000 over a five year period, for financing new and standing technology based businesses in the state.

He said the bill established procedures by which the science and technology board of directors could operate the seed capital financing program. He stated the seed capital fund source was developed in the 1982 program, by which the in-state investment funds diverted a portion of the coal-severance trust fund. He said the fund had a \$24,000,000 balance right now, and would continue to receive 12 1/2% of the coal tax collected. He said the fund would continue to be used by the board of investments as a source of asset based lending through commercial banks.

Representative Marks said the alliance's use of a portion of the fund would not infringe on the current

Dave Lewis said HB 683 directed the Board of Investments to allow the Science and Technology people to manage \$7,500,000 of the coal trust fund. He said the Investment Board had access to the entire fund for the types of asset based loans they made. He said the use of a portion of the in-state funds was not going to hamper the program managed by the Board of Investments. He said the last loan they had granted, was for \$8,000,000; with about \$1,000,000 coming from the in-state fund, and about \$7,000,000 from the coal trust fund. He said they were responsible for, and had access to the entire trust fund, and the Board of Investments supported this legislation.

John Murphy said Montana Power Company required him to seek job creation and economic development in the state. He said Montana Power was often contacted by entrepreneurs seeking expansion of their existing businesses, or businesses planning to relocate in Montana. He stated these business were often technology based with innovative projects or processes, and there was a critical need for seed capital to get through the start-up and early development stage. He said capital was not readily available through conventional sources, and this program was desperately needed in Montana.

Mona Jamison said she had drafted the majority of the provisions in this act, and said she felt this piece of legislation probably had more legislative direction for a state agency than any other legislation before the legislature. She said there were many Sections of the bill containing criteria the Board had to meet before making any loans or investments. She said she was totally comfortable the bill would meet any terms of constitutionality. She urged the committee's support.

Questions From Committee Members: Senator Lynch said the Governor of Montana should be complemented on this bill. He said he felt it was absolutely the right way to go.

Closing by Sponsor: Representative Marks summarized by stating the House committee had passed the bill before he had finished closing.

DISPOSITION OF HOUSE BILL 683

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 683 BE CONCURRED IN. Senator Noble seconded the motion. The motion Carried Unanimously. Chairman Thayer carried the bill on the Senate floor.

HEARING ON HOUSE BILL 258

Presentation and Opening Statement by Sponsor:

Representative Gary Spaeth, House District 84, said HB 258 was being introduced at the request of the Department of Commerce and the ski operators in Montana. He said the bill was an act to create a board for passenger tramway safety, and transfer powers, duties, and functions the Department of Commerce provided in relation to tramways. He said the act was primarily designed to answer tramway safety concerns in the operation of lifts and other public equipment. Representative Spaeth said the reason for making the change was because the Department of Commerce had multiple responsibilities, and there was a arising need to delegate regulation, to a board with more expertise in the specific area.

Representative Spaeth asked the committee to amend Section 2, page 2, line 22 which dealt with liability limits. He said the bill stated section 2-9-108 MCA, asked that be amended to read 2-9-305. He said 2-9-108 was the general governmental immunity section, and had limited immunity. He said he felt that section would be of very little use. He stated section 2-9-305 provided immunization and defense for public offices and employees sued for their actions taken within the course and scope of their employment. He said section 2-9-305 more accurately provided for the needs of the board.

List of Testifying Proponents and What Group They Represent:

Pat Melby - Montana Ski Areas Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Pat Melby said that when tramway safety was first established, it was administered by a board of tramway safety. He said that during the early 70's, most of the boards were eliminated, and advisory councils were created, and the Department of Commerce had been handling those responsibilities since that time. He stated HB 258 would bring this program into



D. A. Baker, M.D.

*Baker Guardian
Holy Family Medical Clinic
E. 235 Rowan - Suite 109
Spokane, WA 99207
(509) 483-0158*

February 9, 1989

*Representative Bob Pavlovich
Chairman of the House Business & Economics Development Committee
Capitol Station
Helena, Montana 59620*

I would like to encourage your support of the Montana Science & Technology Alliance Program. From 1984 - 1988 M.S. & T.A. evaluated my high tech developmental project and felt it and its' associated industry would be good for Montana's business and commerce. My development centers on miniaturizing and automating the fetal monitoring equipment currently being used by hospitals throughout the world. Converting this diagnostic equipment into a portable form has had the firm support of leading health agencies interested in cutting their medical diagnostic overhead expenses. It's technical development has had financial and promotional support from NASA and the National Institute of Health. Unfortunately the M.S. & T.A.'s support of the project was curtailed in a recent decision of the Montana Supreme Court.

If Montana hopes to maintain its' economic stability, investments for the future have to be made and institutions such as M.S. & T.A. must have your support. A number of other states have encouraged high tech development quite profitably in creating jobs and establishing the seeds for maintaining a technically trained work force which is so necessary for the economic health of its' state.

The State of Montana needs its Science and Technology Alliance office if jobs and industry are to be encouraged in Montana.

Sincerely,

D.A. Baker, M.D.

Intra-campus MEMORANDUM

SENATE BUSINESS ADMINISTRATION

EXHIBIT NO. 2DATE 3/10/89BILL NO. HB 683

UNIVERSITY OF MONTANA
School of Business Administration

DATE: March 6, 1989

TO: Senate Business and Industry Committee
c/o Gene Thayer

FROM: Larry Gianchetta, ^{JD}Dean

RE: Montana Science and Technology Financing Act

For the record, my name is Larry Gianchetta and I am Dean of the School of Business Administration at the University of Montana. Also, it should be noted that I was a member of the Financial Advisory Committee to the Montana Science and Technology Alliance when it was still in the seed capital business. This is a committee which looks at businesses in the early stages of development for possible seed capital funding.

Being a Professor of Management and Dean of the School of Business Administration, I am often engaged in working with businesses in the early stages of their development. There is plenty of statistical data to support that many well-managed businesses with an excellent product ultimately end in failure due to the lack of working capital. Most financial institutions are willing to make loans to businesses with their assets as collateral. Businesses in the early stages of their development have not had the opportunity to develop the necessary assets to qualify for loans at most loaning institutions. It is critical that the State of Montana provide a vehicle for capital infusion into these businesses in their early stages and I think the seed capital program provided by the Montana Science and Technology Alliance was working well. In fact I must say, having been involved in many similar processes, that there are none as streamlined and sophisticated as the seed capital program that existed within MSTA. When one considers the staff, the board of directors, and the members of the financial advisory committee, the people resource base there is outstanding. Coupled with the process that was in place, the seed capital made available to early stage companies was "well-invested." Two particular examples in the Missoula area I have worked with from almost day one are Health Incentives and ChromatoChem.

Statistics provided by our Bureau of Business and Economic Research regarding the out-migration in our state over the last decade indicate we should all be concerned. The Montana Science and Technology Financing Act is exactly "what the doctor ordered"

ex #2
3/10/89

to reverse that trend. I encourage you to support the
aforementioned act and let the Montana Science and Technology
Alliance go back to providing seed capital to early stage
businesses. It has an excellent, and proven, track record.

LG:CD

Health Incentives, Inc.

Containing Costs and Promoting Health

March 7, 1989

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 3/10/89

BILL NO. HB 683

Gene Thayer
Chairman
Montana Senate
Business and Industry Committee
Helena, MT

Dear Mr. Thayer:

I am David Feffer, President of Health Incentives, Inc. and am writing in support of the proposed Montana Science and Technology Financing Act.

Expanding the business base in Montana is of critical importance to the positive economic and social future of the state. One of the keys to expanding this base, through the creativity and hard work of people willing to take an idea and grow it into a functioning business, is the availability of capital. Montana, is sadly lacking in capital for business development and expansion; and I feel that the proposed Montana Science and Technology Financing Act is a extremely important step in filling this capital void.

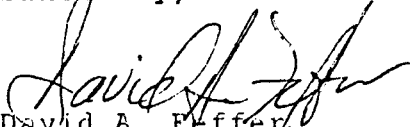
From a personal point of view, Michael Wood and I founded Health Incentives in 1983 with limited capital that we raised from family and friends. There was no other source available. With this we built a small successful business. Our business showed significant potential and after four years we required additional capital to expand. We sought financing from the Montana Science and Technology Alliance and we were successful in receiving \$100,000 to match monies that were invested by private individuals. This financing along with the technical assistance that we received from the Alliance staff and board were invaluable in helping Health Incentives achieve business success. Without the Alliance financing our expansion would have been seriously affected if not stopped altogether.

ex. #3

3/10/89

As an entrepreneur, I have been continually frustrated with the unavailability of capital for business development in Montana. There are hundreds of people in the state with good business ideas and the energy to make them a reality. This act will provide what I believe is an important source and catalyst for broad based and needed economic expansion in Montana.

Sincerely,

A handwritten signature in cursive script, appearing to read "David A. Pfeffer".

David A. Pfeffer
President and CEO byink

DAF/lg

TESTIMONY OF
Carol Daly, Executive Director
Flathead Economic Development Corporation

PREPARED FOR THE
Senate Business and Industry Committee
March 10, 1989

on
HB683
"The Montana Science and Technology Financing Act"

Mr. Chairman, members of the Committee, for the record my name is Carol Daly. I am executive director of the Flathead Economic Development Corporation, a private non-profit organization working to stimulate and support new and expanded business opportunities in the Flathead Valley.

I also am wearing two other hats today -- as one of the original board members of the Montana Science and Technology Alliance, and as the co-owner (with my husband) of a precision machine shop in Kalispell specializing in defense and aerospace component manufacturing.

As an economic developer, I try to help businesses and entrepreneurs with high technology products they are seeking to commercialize. Most of these people have exhausted their personal resources in bringing their ideas to the commercialization stage. They have little left to offer for collateral. They are facing heavy start-up expenses with, in the early months, low cash flows. Their ability to access conventional financing sources is almost nil. What they need is equity or near-equity (patient) financing. They cannot start paying back the debt the day after they incur it, BUT they have the potential to generate many, many times the payback amount in the future.

When the Montana Science and Technology Alliance was making seed capital investments, these businesses and entrepreneurs had an opportunity to develop in Montana, if their products and processes were sound. The rigorous due diligence review of MSTTA was designed to filter out unsound deals, and to help good deals develop into better ones. Not only the money, but the technical assistance provided were badly needed, and gratefully received.

Without the MSTTA seed capital program, however, I -- and other economic developers -- have no place to send the technologically and commercially exciting deals I find. I have tried to find private individuals willing to invest their funds in such projects, but unless they have some due diligence capability themselves, such investors are very reluctant to expose themselves to the higher risk of new technology projects. In six months of trying, I have placed only one high tech project in Montana with private investors.

3/10/89

Currently I am working with several entrepreneurs with good business plans, well developed prototypes, identified markets, and lots of potential. One of them was working closely with MSTTA just before it was forced to cease its investment activities, and he felt very optimistic about his chances of obtaining financial support from the Alliance. I have been trying to help him fill that gap, but last week he received an offer from an Idaho investment group. If he accepts their offer, the project will be commercialized in Boise.

Another company which I was unable to finance in the Flathead will be setting up manufacturing facilities in Alberta, partially capitalized by a grant from that province's equivalent of our MSTTA program.

Meanwhile, back at our machine shop, entrepreneurs come to us to have prototype and pre-commercialization work done. Frankly, undercapitalized as they are, many of these customers represent a real risk to us. Even if we get material costs paid up front, labor charges may remain unpaid for months -- or forever. We are a small firm ourselves, and cannot afford to provide this type of supplier financing to new businesses, when we are ourselves paying market rate interest on our own borrowed funds. Thus it is not only new firms that are hampered by the lack of adequate seed capital resources in Montana, but existing manufacturers and suppliers as well. All of us would be healthier if the current seed capital financing gap were filled.

The Flathead Economic Development Corporation urges your support for passage of House Bill 683.

GREAT FALLS CAPITAL CORPORATION

BUSINESS ACQUISITIONS & INVESTMENTS

3/10/89
HB 683GF
CC

March 10, 1989

Gene Thayer
Chairman
Montana Senate
Business and Industry Committee

Greetings:

My name is Mike Parker and I represent the interests of the Great Falls Capital Corporation of Great Falls. I am writing in support of House Bill # 683 which provides for revision of the Montana Science and Technology Act.

Great Falls Capital was formed in response to the Montana Capital Company Act for the purpose of investing in or acquiring qualified Montana businesses. Our search for qualified candidates has led us to all corners of the state of Montana and throughout the entire U.S. in search of profitable existing businesses that fit our investment criteria.

In the course of our search, I have been contacted by or have contacted many early-stage Montana businesses who are seeking financing. While their youth places them outside the parameters of the GFCC acquisition criteria, they, none the less, represent a potential for growth and a contribution to economic development in their communities and for the state of Montana.

Funding for companies at this stage of their development is generally not available from commercial sources, and judging from the current state of the saving and loan industry, we should not, in fact, look to conventional lenders as a source of venture and development capital. We must be able, instead, to look to an organization like the Science and Technology Alliance as a source of vital seed and early stage capital. It is my opinion that the Science and Technology Alliance is an important member of the Montana Financial Community and can contribute significantly to economic growth and development in Montana.

Again, I urge your support and the support of your entire committee for House Bill # 683. Thank you.

Sincerely,

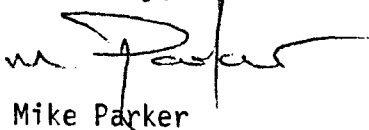

Mike Parker

EXHIBIT NO. 6DATE 3/10/89BILL NO. HB 683

GALLATIN DEVELOPMENT CORPORATION
P.O. BOX 1114
BOZEMAN, MONTANA 59771-1114
(406) 587-3113

March 8, 1989

MEMO

TO: Gene Thayer, Chairman
Senate Business and Industry Committee

FR: Linda Wyckoff, Executive Director *fw*

RE: House Bill #683

The following is a written testimonial to be presented by Laurie Shadoan on behalf of the Gallatin Development Corporation in Bozeman to the House Business and Economic Development Committee on Friday, March 10.

The Gallatin Development Corporation fully supports the bill and asks the committee to consider the economic impact on our state.

As a local nonprofit economic development organization working with 300 plus contacts annually, the Science and Technology Alliance (STA) has been a great resource.

Many of the firms who contact the Gallatin Development Corporation for assistance are start-up firms which need access to seed capital. In many cases, particularly where capital resource needs are relatively small (\$50,000 - \$250,000), the STA represents the only viable funding source for the firms. Any actions which limit STA's funding capacity directly limit the state's ability to move forward in economic development efforts.

We plan to launch a proactive marketing program this year which will create an even greater need for STA. It was very unfortunate to have lost this source of funding and expertise.

The Alliance serves the state in several ways:

1. As a source of funding,
2. As a source of expertise,
3. As a network for venture capital and additional expertise for the state,
4. As an enhancer for technology transfer and research and development at MSU, and
5. As a participant with the private sector to encourage growth of this industry in our state.

Alliance operations are especially significant in our region due to our nucleus of existing high tech companies, the number of high tech companies considering doing business in our region, the Advanced Technology Park, and MSU.

ex #6
3/10/89

Gene Thayer
March 8, 1989
Page 2

Cases in point:

ILX Lightwave moved from Minnesota with two employees, now has 35, projects continued growth for the next three years.

Toomay, Mathis & Associates started with three employees, now have 25 and are growing.

Skyland Scientific had 35 employees in 1985, now has 65.

Lattice, Inc. moved to Bozeman February, 1989. Plans to have five employees initially and will grow to 15.

Electromet, Inc. planned to open with 60 employees and projected 200 in five years. Had received approval from STA but did not get funded due to Supreme Court decision.

All of the above companies have received direct or indirect assistance from STA.

Two of our local companies were approached by other states and offered money to move. This is an obvious concern for our area.

The Gallatin Development Corporation has worked with Montana Power and representatives from MSU, among others, to coordinate meetings with high tech companies in Gallatin County. The purpose of this is to seek ways to enhance local growth and recruitment of like companies. Access to capital is a major requirement for both existing local firms and high tech firms considering relocation to Montana.

In the age of information, our access to the university, state of the art telecommunications, and advances in the technological fields, Montana can certainly be competitive with the support of a program such as the Science and Technology Alliance. Please give this bill your support. Thank you!

LW/jb

CC: Steve Huntington

SENATE STANDING COMMITTEE REPORT

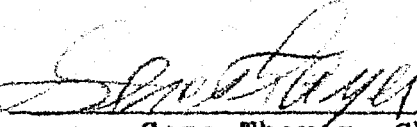
March 10, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 683 (third reading copy -- blue), respectfully report that HB 683 be concurred in.

Sponsor: Marks (Thayer)

BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/10/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

HOUSE BILL NO. 683

INTRODUCED BY MARKS, BRADLEY, THAYER, VINCENT, RAMIREZ,
REGAN, VAN VALKENBURG, MERCER, PAVLOVICH, CRIPPEN, QUILICI,
HALLIGAN, HARRINGTON, IVERSON, D. BROWN, O'KEEFE, HARP,
SWIFT, ADDY, DRISCOLL, GIACOMETTO, BENGTSON, KADAS,
SPAETH, T. NELSON, WILLIAMS, MAZUREK, HARPER, MEYER,
BARDANOUE, PECK, BOYLAN, DEVLIN, JERGESON, DAILY,
BLAYLOCK, SIMON, REHBERG, FARRELL, NATHE
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR
PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING

SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 3] requires the Montana board of science and
technology development to adopt rules to implement the
Montana Science and Technology Financing Act created by this
bill.

It is the intent of the legislature that the board
adopt rules:

- (1) governing the conduct of board business;
- (2) establishing application procedures that, at a
minimum, require the submittal of an executive summary for a
science and technology development project loan, a business
plan for a seed capital project loan, a research and
development project proposal for a research and development
project loan, and other documents necessary to meet the
criteria established in chapter 3 of Title 90;
- (3) establishing the procedures to be followed by the
board in its review process prior to making a science and
technology development project loan; and
- (4) establishing postdisbursement activities that
describe the ongoing involvement or follow-along management
of the board that may be required in a science and

1 technology development project loan agreement.

2 The rules should be promulgated so as to promote the
3 purposes and goals stated in the act. These include:

4 (1) strengthening and diversifying the state's economy
5 by facilitating a public sector-private sector partnership
6 to encourage scientific and technological development within
7 the state in order to keep pace with a changing economic
8 structure and to create new jobs and expand business
9 opportunities;

10 (2) using the in-state investment fund for the
11 purposes adopted by the voters of Montana in 1982 in
12 Initiative Measure No. 95, by providing financial programs
13 for new and expanding businesses to encourage the creation
14 of jobs and expansion of the tax base;

15 (3) assisting in the acceleration of development of
16 technology in the state through the making of technology
17 investments that have significant potential for
18 commercialization in Montana;

19 (4) working to forge a partnership among the private
20 sector, the university community, and government;

21 (5) creating a funding source for the board to use in
22 making seed capital development project loans;

23 (6) creating a mechanism for the board to use in
24 making seed capital project loans; and

25 (7) creating a mechanism for the board to use in

1 making research and development project loans.

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 NEW SECTION. **Section 1.** Short title. This chapter may
5 be cited as the "Montana Science and Technology Financing
6 Act".

7 NEW SECTION. **Section 2.** Findings and purpose. (1) The
8 legislature finds and declares that:

9 (a) it is the policy of the state of Montana to
10 promote the health, safety, and general welfare of all the
11 people of the state;

12 (b) this policy will be furthered through
13 strengthening and diversifying the state's economy by
14 facilitating a public sector-private sector partnership to
15 encourage scientific and technological development within
16 the state in order to keep pace with a changing economic
17 structure and to create new jobs and expand business
18 opportunities;

19 (c) this strengthening and diversification will be
20 fostered by assisting in the acceleration of development of
21 technology in the state through participation with the
22 private sector in the financing of science and technology
23 development projects that have significant potential for
24 commercialization in Montana;

25 (d) the in-state investment fund created through

1 adoption of Initiative Measure No. 95 by the voters of
2 Montana in 1982 is the appropriate source for providing
3 financing programs for the development of new and expanding
4 businesses in Montana;

5 (e) the Science and Technology Development Board Seed
6 Capital Bond Act contained provisions that were found to be
7 unconstitutional by the Montana supreme court, and the 51st
8 legislature of the state of Montana must remedy those
9 defects through legislation; and

10 (f) the Montana science and technology development
11 board has demonstrated success in forging a partnership
12 among the private sector, the university community, and
13 government, and this success should be continued through an
14 ongoing legislative commitment to the board's programs.

15 (2) The purposes of this chapter are to provide:

16 (a) a funding source for the board to make seed
17 capital project loans;

18 (b) a mechanism for the board to use in making seed
19 capital project loans; and

20 (c) a mechanism for the board to use in making
21 research and development project loans, the funding source
22 of which will be provided by separate legislation.

23 NEW SECTION. Section 3. Rulemaking authority. The
24 board shall adopt rules necessary to implement the
25 provisions of this chapter, including but not limited to

1 rules:

2 (1) governing the conduct of board business;
3 (2) establishing application procedures that, at a
4 minimum, require the submittal of:

5 (a) an executive summary for a science and technology
6 development project loan;

7 (b) a business plan for a seed capital project loan;

8 (c) a research and development project proposal for a
9 research and development project loan; and

10 (d) other documents necessary to meet the criteria
11 established in this chapter;

12 (3) establishing the procedures to be followed by the
13 board in its review process prior to making a science and
14 technology development project loan; and

15 (4) establishing postdisbursement activities that
16 describe the ongoing involvement or follow-along management
17 of the board that may be required in a science and
18 technology development project loan agreement.

19 NEW SECTION. Section 4. Science and technology
20 development project -- priorities. (1) The board shall make
21 a loan for a science and technology development project if
22 it determines that the project has potential to stimulate
23 economic development in this state and meets the loan
24 criteria established in this chapter.

25 (2) The board shall give priority to project proposals

that it determines incorporate innovative technologies and involve, but are not limited to, one or more of the following target technologies:

- (a) mineral technology;
- (b) agricultural technology;
- (c) forestry technology;
- (d) energy technology;
- (e) materials sciences;
- (f) information sciences;
- (g) biotechnology;
- (h) microelectronics and computer sciences; or
- (i) hazardous waste treatment and disposal.

NEW SECTION. Section 5. General criteria underlying science and technology development project loan program. The board may make a science and technology development project loan only upon a favorable determination that the proposed project:

- (1) is consistent with the findings and purposes of this chapter because it incorporates innovative technology;
- (2) has prospects for collaboration between the public and private sectors of the state's economy;
- (3) has prospects for achieving commercial success and for creating new jobs in the state;
- (4) has potential for commercial success related to the specific product or business development methodology

proposed;

(5) can provide matching funds to the project as required under 90-3-301; and

(6) has a management structure that allows ongoing postdisbursement involvement by the board.

NEW SECTION. Section 6. Seed capital project -- goals. (1) The board may make a seed capital project loan in a company upon a determination by the board that the project meets the loan criteria established in [sections 5 and 7] and that the project meets the goals established in subsection (2) and involves the development and commercialization of innovative products or processes.

(2) The goals in making a seed capital project loan are:

(a) to assist the development of innovative technology in the state by providing a source of capital to the technology-based entrepreneurial sector in the state's economy;

(b) to provide financing and follow-along management support for entrepreneurial companies in the state that are attempting to develop products or processes based on innovative technologies; and

(c) to provide a liaison between entrepreneurial companies in the state and other investors in an effort to enhance the pool of capital available to technology-based

1 companies in the state.

2 NEW SECTION. Section 7. specific criteria for seed
3 capital project loans. The board may make a seed capital
4 project loan only if it determines that the proposed project
5 complies with the criteria and goals set forth in [sections
6 5 and 6] and the board further determines that:

7 (1) the project develops or employs innovative
8 technology to produce a product or process that promises a
9 significant competitive advantage;

10 (2) the project provides an opportunity to preserve
11 the principal of the loan amount and earn a monetary return;

12 (3) the project has potential to realize substantial
13 growth in sales and a sales revenue level that provides the
14 capacity to meet the board's payback requirements;

15 (4) the company is located or preparing to locate
16 within the state;

17 (5) the project demonstrates a capacity to diversify
18 or add value to the state's basic industries;

19 (6) the company's management team possesses sufficient
20 business experience to enable the company to reach its
21 commercial potential;

22 (7) the company has a strong potential for creating
23 and retaining jobs and stimulating tax revenue growth in the
24 state;

25 (8) the company's product or process is targeted for a

1 sizeable commercial market;

2 (9) the company's product or process is of sufficient
3 quality to significantly impact the target market; and

4 (10) the company's business plan is sufficiently
5 designed to complete financing, marketing, and production
6 objectives to accomplish the proposed commercialization.

7 NEW SECTION. Section 8. Research and development
8 project -- goals. (1) The board may make a research and
9 development project loan upon a determination by the board
10 that the proposed project meets the loan criteria
11 established in [sections 5 and 9] and that the project meets
12 one of the goals established in subsection (2).

13 (2) The goals of the research and development project
14 loan program are:

15 (a) to significantly upgrade existing research
16 capabilities within the state's research and development
17 institutions and organizations;

18 (b) to provide financial support to individual
19 research projects that have significant potential to:

20 (i) advance technology development in the state; or

21 (ii) be readily commercialized upon completion of the
22 research phase; or

23 (c) to facilitate the process of transferring research
24 from the laboratory to the commercial marketplace.

25 (3) These goals may be accomplished by:

1 (a) supporting the advanced technology centers of
 2 excellence program that will institutionalize cooperative
 3 arrangements between the public sector and the private
 4 sector and significantly build on existing research and
 5 development capabilities;

6 (b) providing financial support for individual
 7 research and development projects that are at a preprototype
 8 or early stage but that hold significant potential for
 9 future commercial success;

10 (c) providing financial support for the development of
 11 advanced research capabilities within the state's university
 12 system through the acquisition of facilities, equipment, or
 13 personnel;

14 (d) facilitating the flow of information to
 15 technology-based entrepreneurial businesses in the state to
 16 assist those businesses in reaching their full commercial
 17 potential; or

18 (e) improving the information and resources available
 19 to entrepreneurs in the state who are involved in
 20 commercialization of innovative products and processes.

21 NEW SECTION. Section 9. Specific criteria for
 22 research and development project loans. The board may make a
 23 research and development project loan upon its determination
 24 that the proposed project complies with the criteria and
 25 goals set forth in [sections 5 and 8] and if the board

1 determines that:

2 (1) the project has the potential to diversify or add
 3 value to a basic industry of the state's economy;

4 (2) the project demonstrates a clear path to
 5 commercial development of the research results within the
 6 state;

7 (3) the project involves university system research
 8 participation whenever practical;

9 (4) the project employs or otherwise takes advantage
 10 of existing research and development strengths within the
 11 state's university and private research establishments;

12 (5) the project involves a realistic and achievable
 13 research project design;

14 (6) the project develops or employs an innovative
 15 technology;

16 (7) the project activity is located within the state;
 17 and

18 (8) the project's research team possesses sufficient
 19 expertise in the appropriate technology area to complete the
 20 research objectives of the project.

21 NEW SECTION. Section 10. Science and technology
 22 development project loans -- board action. (1) If the board
 23 determines that a science and technology development project
 24 meets the criteria established in this chapter and has
 25 complied with the applicable procedures and review processes

1 established by the board, the board may enter into a science
2 and technology development project loan agreement with the
3 loan recipient and authorize the disbursement of funds to
4 the loan recipient.

5 (2) All decisions of the board are final and not
6 subject to the contested case provisions of Title 2, chapter
7 4.

8 NEW SECTION. Section 11. Science and technology
9 development project loan agreement. (1) The board shall
10 enter into a science and technology development project loan
11 agreement with a loan recipient whose product or process
12 will be developed and commercialized as a result of a
13 science and technology development project loan.

14 (2) The loan agreement, at a minimum, must contain the
15 following provisions:

16 (a) the project budget;

17 (b) the financing, marketing, and production
18 milestones for the project that describe project tasks to be
19 achieved in each phase of the project at designated times;

20 (c) the reporting requirements, including but not
21 limited to:

22 (i) quarterly financial statements;

23 (ii) quarterly commercialization progress reports;

24 (iii) annual reports; and

25 (iv) reports on any significant project transactions;

1 (d) the disbursement schedule for the loan;

2 (e) the payback to the board;

3 (f) the causes for loan revocation, suspension, or
4 termination; and

5 (g) the intellectual property provisions.

6 NEW SECTION. Section 12. Seed capital project loan
7 agreement -- specific requirements -- payback. (1) In
8 addition to the loan agreement provisions required in
9 [section 11], a seed capital project loan must be structured
10 as contracted debt that includes but is not limited to the
11 following terms:

12 (a) an interest rate set at the level that provides a
13 return to the board, from paybacks by all of its portfolio
14 companies, in an amount at least equal to the principal
15 amount of the loans and that provides for a market rate of
16 return when considering the overall benefit to the state
17 derived from the projects;

18 (b) a provision in the note that may defer debt
19 service until maturity of the note, the term of which may
20 not exceed 8 years;

21 (c) a loan amount that may not exceed \$350,000 in any
22 one round of financing. Successive rounds of financing in
23 which the board participates for any one company may not
24 occur within a 9-month period. The total amount that may be
25 loaned to any one company may not exceed \$750,000.

1 (d) a provision that the note becomes due in full upon
2 dissolution or liquidation of the company.

3 (2) (a) In addition to the provisions in [section 11]
4 and subsection (1), a seed capital project loan agreement
5 may provide for any of the following:

6 (i) a convertible debenture;

7 (ii) a warrant held by the board; or

8 (iii) a warrant held by a third party for the benefit
9 of the board.

10 (b) However, the board itself may not convert the
11 convertible debenture, exercise the warrant, or hold stock
12 acquired upon any conversion or exercise.

13 NEW SECTION. Section 13. Research and development
14 project loan agreement -- specific requirements -- payback.
15 In addition to the loan agreement provisions described in
16 [section 11], a research and development project loan
17 agreement must be structured as contracted debt with the
18 following terms:

19 (1) The agreement must include provisions calling for
20 a payback of two times the original loan amount paid as a
21 percentage of the income stream derived from the sale or
22 other commercialization of products or processes developed
23 with the board's financing. This percentage rate may not
24 exceed 5%.

25 (2) The payback on a research and development project

1 loan for a technology transfer and assistance project may be
2 made pursuant to subsection (1) or may be realized in terms
3 of indirect benefits related to the goals and criteria of
4 the program. No more than 10% of the board's annual
5 allocation of research and development funds may be used for
6 technology transfer and assistance projects.

7 NEW SECTION. Section 14. Deposit of payback -- seed
8 capital and research and development project loans. (1) The
9 payback of principal and earnings on a seed capital project
10 loan executed under this chapter must be administered
11 pursuant to section 17-6-306.

12 (2) The payback of principal and earnings on a
13 research and development project loan must be deposited to
14 the state special revenue fund to the credit of the science
15 and technology development account created in [section 15].

16 (3) All paybacks of principal and earnings to the
17 board from any agreements executed by the board between July
18 1, 1985, and March 31, 1989, must be deposited to the state
19 special revenue fund to the credit of the science and
20 technology development account created in [section 15] for
21 use by the board. The paybacks include all those received
22 after January 1, 1989.

23 NEW SECTION. Section 15. Science and technology
24 development account. (1) There is a science and technology
25 development account within the state special revenue fund

1 established in 17-2-102.

2 (2) There must be paid into the science and technology
3 development account:

4 (a) the payback of principal and earnings on a
5 research and development project loan executed under this
6 chapter; and

7 (b) all payback of principal and earnings to the board
8 from any agreements executed by the board between July 1,
9 1985, and March 31, 1989.

10 NEW SECTION. **Section 16.** Montana board of science and
11 technology development -- allocation -- composition --
12 quasi-judicial powers. (1) There is a Montana board of
13 science and technology development. The board is allocated
14 to the department of commerce. The department shall select,
15 prescribe the duties for, and supervise staff to administer
16 board activities.

17 (2) The board consists of nine members appointed by
18 the governor as prescribed in 2-15-124.

19 (3) In making appointments to the board, the governor
20 shall consider people with extensive interest and experience
21 in science and technology and the application of such
22 interest and experience to economic development in Montana.

23 (4) The membership of the board must include:

24 (a) at least two members with knowledge of early stage
25 financing of private businesses;

1 (b) at least one member with expertise in applied
2 technology development; and

3 (c) at least five members from the private sector.

4 (5) The board is designated a quasi-judicial board for
5 purposes of 2-15-124.

6 **Section 17.** Section 90-3-102, MCA, is amended to read:

7 **"90-3-102. Definitions.** As used in this chapter the
8 following definitions apply:

9 (1) "Act" means the Montana science and technology
10 financing act.

11 ~~{1}~~(2) "Board" means the Montana board of science and
12 technology development board provided for in 2-15-1010
13 [section 16].

14 ~~{2}~~--"Business-and-industry" means--a--privately--owned
15 and--operated--agricultural--or--commercial--enterprise--or
16 association--that--maintains--a--research--development,
17 commercial--or--manufacturing--facility--in--Montana--The
18 enterprise-or-association-need-not-have-its-headquarters
19 within-the-state.

20 (3) "Company" means a firm, partnership, corporation,
21 association, or any other entity authorized to conduct
22 business in Montana.

23 (4) "Convertible debenture" means a debenture
24 convertible into stock under certain conditions by any
25 individual or company. The debenture may not be converted by

1 the board.

2 (5) "Debenture" or "note" means a writing or
3 certificate issued as evidence of debt.

4 {3}{6} "Department" means the department of commerce
5 created in 2-15-1801.

6 (7) "Expansion capital project" means a science and
7 technology development project undertaken to enable a
8 company to expand its manufacturing and marketing activities
9 in order to move its products or services into new markets
10 or to expand existing markets.

11 (8) "Innovative technology" means the involvement of a
12 product or process that embodies the use of implements,
13 machinery, equipment, chemical formulations, resources,
14 materials, methods, or other items in a manner that departs
15 from previous commercial developments, practices, or
16 applications.

17 (9) "Matching funds" means the funds received in cash
18 by the science and technology development project loan
19 recipient from nonstate-appropriated sources and committed
20 by the loan recipient to the project in an amount that is at
21 least equal to the funds loaned to the recipient by the
22 board for use in the science and technology development
23 project.

24 (10) "Portfolio company" means a startup or expansion
25 stage company that has received a seed capital project loan

1 from the board.

2 {4}{11} "Private sector" means any entity or
3 individual, not principally a part of or associated with a
4 governmental unit, that is associated with or involved in
5 commercial activity.

6 (12) "Research and development project" means a science
7 and technology development project that falls into the
8 category of research capability development, applied
9 technology research, or technology transfer and assistance.

10 (13) "Research and development project loan" means a
11 science and technology development project loan entered into
12 between the board and a loan recipient for a research and
13 development project.

14 {5}{14} "Technology Science and technology development
15 project" means an-activity either a seed capital project or
16 research and development project designed to discover,
17 develop, transfer, utilize, or commercialize existing or
18 new, innovative technology in order to strengthen and
19 enhance economic development in Montana.

20 {6}--"Technology-investment"--means-an--award--of--funds
21 for--a--technology-development-project--including-technology
22 transfer--to-stimulate--Montana's--economy--The--technology
23 investments--authorized--by--this-act-are-not-investments-of
24 public-funds-for-purposes-of-Article-VIII--section--13--of
25 the--Montana--constitution--or--Title-17--chapter-6--relating

1 to--the--unified--investment--of--public--funds,---but---are
 2 investments---of--public--resources--intended--to--encourage
 3 technologically--based---economic---development---that---may
 4 eventually---result---in---a---financial---return--on--those
 5 investments-

6 (15) "Science and technology development project loan
 7 agreement" or "loan" means an agreement entered into between
 8 the board and the loan recipient of a seed capital project
 9 loan or a research and development project loan that:

10 (a) creates a debt relationship between the parties;
 11 (b) provides for a financial return to the board;
 12 (c) provides economic development potential to the
 13 state; and

14 (d) contains the applicable provisions and terms
 15 required by this chapter.

16 (16) "Seed capital project" means a startup capital
 17 project or expansion capital project.

18 (17) "Seed capital project loan" means a science and
 19 technology development project loan entered into between the
 20 board and a loan recipient for a seed capital project.

21 (18) "Startup capital project" means a science and
 22 technology development project that assists a company in
 23 initiating commercial operations.

24 (19) "State" means the state of Montana.

25 (20) "Warrant" means an instrument issued by a

1 corporation that gives a holder other than the board the
 2 right to purchase stock of a corporation either for a
 3 limited time or perpetually."

4 **Section 18.** Section 90-3-203, MCA, is amended to read:

5 "90-3-203. Powers and duties of board. The board
 6 shall:

7 {1}--establish-policies-and-priorities-that-will-expand
 8 and--develop--the-use-of-science-and-technology-for-economic
 9 development-in-Montana;

10 {2}--provide-technical-assistance-for-the--transfer--of
 11 technology--to--Montana-businesses-in-order-to-encourage-the
 12 use-of-new-technology-by-Montana-business-and-industry;

13 {3}{1} make technology-investments loans in science
 14 and technology development projects pursuant to the
 15 provisions of this act in the following areas that have
 16 short---or---long-term potential to stimulate economic
 17 development in Montana:

18 (a) research capability development;

19 (b) applied technological technology research;

20 (c) technology assistance-and transfer and assistance;

21 and

22 (d) seed-capital-awards startup capital or expansion
 23 capital projects for development and commercialization of
 24 new innovative products and processes;

25 {4}{2} accept grants or receive devises of money or

property to be used in Montana for ~~investments-described-in~~
loans made pursuant to this chapter; and

~~{5}{3}~~ submit to the governor and the legislature a
report describing the board's programs and accomplishments
by November January 1 of each even-numbered odd-numbered
year or at the request of the governor;.

~~{6}--adopt--rules-necessary-to-implement-the-provisions~~
~~of-this-chapter--including-but-not-limited-to-rules;~~

~~{a}--governing-the-conduct-of-board-business;~~

~~{b}--establishing--matching--fund---requirements---for~~
~~capability--basic--research--and--seed--capital-investment~~
~~programs;~~

~~{c}--establishing---criteria---for---determining---the~~
~~eligibility---of---projects---and--programs--for--technology~~
~~investments;~~

~~{d}--establishing-methods-of--committing--funds--types~~
~~and-amounts-of-fees--and-types-of-research-investments-to-be~~
~~made--and~~

~~{7}--adopt--specific--goals--and--objectives--for--each~~
~~program-administered-by-the-board."~~

Section 19. Section 90-3-301, MCA, is amended to read:

"90-3-301. Appropriation authority and funding --
matching funds. (1) The board has authority to accept and
expend all funds received by it as grants, donations, or
other private or public income. These funds are statutorily

appropriated as provided in 17-7-502. ~~No-award-may--be--made~~
~~for--activities-for-which-matching-funds-or-participation-of~~
~~financial-intermediaries-is-required-until-such--funds--have~~
~~been-committed.~~

~~{2}--Dollar-for-dollar---matching--funds--are--required~~
~~prior--to--any--expenditure--of--state--funds--for--research~~
~~capability--development--applied-technological-research--or~~
~~seed-capital-awards-or-investments-provided-for-in-90-3-203.~~

~~{3}{2}~~ The appropriations and investments loans made
to and by the board are in addition to and separate from
general fund appropriations to the university system and
other state agencies.

(3) A loan may not be made for a project for which
matching funds have not been received. Matching funds are
required prior to any expenditure of board funds for
research and development projects or seed capital projects.
The board may accept as matching funds those received by the
loan recipient within 1 year prior to the execution of the
loan agreement. The board may require additional matching
funds, depending on the capital need and the degree of risk
encountered in the science and technology development
project."

Section 20. Section 90-3-304, MCA, is amended to read:

"90-3-304. Accountability -- audits. ~~{1}--The-board~~
~~shall-develop-independent-review--and--audit--procedures--to~~

1 ensure-that-investments-made-by-it-are-used-for-the-purposes
2 identified-in-its-investment-agreements-

3 {2}--The--board's-technology-investment-agreements-must
4 contain-provisions-considered--necessary--by--the--board--to
5 ensure--the--proper--inspection--and-review-of-projects,-the
6 attainment-of-project-goals,-and-the-maintenance-of-adequate
7 financial-records-by-recipients-of-board-funds-

8 {3} The board's books and records must be audited by
9 or at the direction of the legislative auditor. The
10 legislative auditor must shall conduct a performance audit
11 of the board's goals, objectives, and statutory duties prior
12 to the 51st 52nd legislative session and at such times as
13 determined necessary by the legislative audit committee. The
14 actual costs of audits must be paid from the board's funds."

15 **Section 21.** Section 2-18-103, MCA, is amended to read:

16 "2-18-103. Officers and employees excepted. Parts 1
17 and 2 do not apply to the following positions in state
18 government:

- 19 (1) elected officials;
- 20 (2) county assessors and their chief deputy;
- 21 (3) officers and employees of the legislative branch;
- 22 (4) judges and employees of the judicial branch;
- 23 (5) members of boards and commissions appointed by the
- 24 governor, appointed by the legislature, or appointed by
- 25 other elected state officials;

1 (6) officers or members of the militia;

2 (7) agency heads appointed by the governor;

3 (8) academic and professional administrative personnel
4 with individual contracts under the authority of the board
5 of regents of higher education;

6 (9) academic and professional administrative personnel
7 and live-in houseparents who have entered into individual
8 contracts with the state school for the deaf and blind under
9 the authority of the state board of public education;

10 (10) teachers under the authority of the department of
11 institutions;

12 (11) investment officer, assistant investment officer,
13 executive director, and three professional staff positions
14 of the board of investments;

15 (12) four professional staff positions under the board
16 of oil and gas conservation; and

17 (13) assistant director for security of the Montana
18 state lottery; and

19 (14) executive director and senior investment officer
20 of the Montana board of science and technology development."

21 **Section 22.** Section 17-6-308, MCA, is amended to read:

22 "17-6-308. Authorized investments. (1) The Except as
23 provided in subsection (4), the Montana in-state investment
24 fund must be invested as authorized by rules adopted by the
25 board. For purposes of this section, "investment" includes

1 the guaranty of loans or bonds in consideration for a fee,
2 in lieu of the actual acquisition of such loans or bonds.

3 (2) The board may use the in-state investment fund to
4 guarantee loans or bonds issued under the provisions of
5 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16,
6 or Title 90, chapter 7. Each guaranty must be given in
7 consideration of a fee. The fees must be paid to the board.
8 The guaranty must provide directly or by separate agreement
9 that the board is fully subrogated to the rights of the
10 obligee under the loan or bond. The board shall by rule
11 establish the maximum ratio between guaranty funds available
12 and loans or bonds to be guaranteed. The board may covenant
13 in bond issues to maintain such ratio. Unless bonds issued
14 to finance a project are secured by a common capital reserve
15 account and a common guaranty fund, the maximum amount of
16 the guaranty authorized by this section may not exceed
17 \$3,000,000 with respect to the bonds or loans to finance the
18 project.

19 (3) The board may make loans from the in-state
20 investment fund to the capital reserve account created
21 pursuant to 17-5-1515 and the guaranty fund created pursuant
22 to 17-5-1520 to establish balances or restore deficiencies
23 therein. The board may agree in connection with the issuance
24 of bonds or notes secured by such account or fund to make
25 such loans. Loans must be on such terms and conditions as

1 the board determines and must be repaid from revenues of the
2 board realized from the exercise of its powers under
3 17-5-1501 through 17-5-1529, subject to the prior pledge of
4 the revenues to the bonds and notes.

5 (4) The board shall allow the Montana board of science
6 and technology development provided for in [section 16] to
7 administer \$7.5 million of the in-state investment fund for
8 seed capital project loans pursuant only to the provisions
9 of Title 90, chapter 3. This authority does not extend
10 beyond June 30, 1994. Until such time as the Montana board
11 of science and technology development makes a loan pursuant
12 to those provisions, the funds under its administration must
13 be invested by the board of investments pursuant to the
14 provisions of 17-6-201."

15 **Section 23.** Section 17-7-502, MCA, is amended to read:
16 "17-7-502. Statutory appropriations -- definition --
17 requisites for validity. (1) A statutory appropriation is an
18 appropriation made by permanent law that authorizes spending
19 by a state agency without the need for a biennial
20 legislative appropriation or budget amendment.

21 (2) Except as provided in subsection (4), to be
22 effective, a statutory appropriation must comply with both
23 of the following provisions:

24 (a) The law containing the statutory authority must be
25 listed in subsection (3).

1 (b) The law or portion of the law making a statutory
2 appropriation must specifically state that a statutory
3 appropriation is made as provided in this section.

4 (3) The following laws are the only laws containing
5 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
6 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
7 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
8 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
9 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
10 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
11 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
12 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
13 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
14 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
15 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
16 section 13, House Bill No. 861, Laws of 1985; and section 1,
17 Chapter 454, Laws of 1987.

18 (4) There is a statutory appropriation to pay the
19 principal, interest, premiums, and costs of issuing, paying,
20 and securing all bonds, notes, or other obligations, as due,
21 that have been authorized and issued pursuant to the laws of
22 Montana. Agencies that have entered into agreements
23 authorized by the laws of Montana to pay the state
24 treasurer, for deposit in accordance with 17-2-101 through
25 17-2-107, as determined by the state treasurer, an amount

1 sufficient to pay the principal and interest as due on the
2 bonds or notes have statutory appropriation authority for
3 such payments. (In subsection (3): pursuant to sec. 15, Ch.
4 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
5 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
6 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
7 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
8 1987, terminates July 1, 1988.)"

9 NEW SECTION. **Section 24.** Repealer. Sections
10 2-15-1810, 90-3-103, 90-3-302, and 90-3-401 through
11 90-3-420, MCA, are repealed.

12 NEW SECTION. **Section 25.** Codification instruction.
13 (1) [Sections 1 through 15] are intended to be codified as
14 an integral part of Title 90, chapter 3, and the provisions
15 of Title 90, chapter 3, apply to the provisions of [sections
16 1 through 15].

17 (2) [Section 16] is intended to be codified as an
18 integral part of Title 2, chapter 15, part 18, and the
19 provisions of Title 2, chapter 15, part 18, apply to
20 [section 16].

21 NEW SECTION. **Section 26.** Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

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1 severable from the invalid applications.

2 NEW SECTION. **Section 27.** Effective date. [This act]

3 is effective on passage and approval.

-End-